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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/715,916	12/14/2012	Tovi Grossman	AUTO/1249US	7542

107456 7590 12/02/2016
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EXAMINER

BOST, DWAYNE D

ART UNIT	PAPER NUMBER
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2699

NOTIFICATION DATE	DELIVERY MODE
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12/02/2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOVI GROSSMAN, GEORGE FITZMAURICE, ANNE AGUR,
and CHRISTIAN HOLZ

Appeal 2016-000601
Application 13/715,916¹
Technology Center 2600

Before JASON V. MORGAN, BRUCE R. WINSOR, and
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

Appellants seek review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1 and 4–22. We have jurisdiction under 35 U.S.C. § 6(b). Claims 2 and 3 are cancelled.²

We AFFIRM.

¹ Appellants indicate the Real Party in Interest is Autodesk, Inc. App. Br. 3.

² Final Act. 2.

Invention

The claims are directed to electronic devices capable of being implanted beneath the skin of a human user. Abstract.

Exemplary Claim

Exemplary claim 1 is reproduced below with disputed limitations emphasized:

1. A device configured to be implanted beneath human skin, the device comprising:
 - a processor;
 - a first input device coupled to the processor and adapted to receive direct input from a user;
 - a first output device coupled to the processor; and
 - a protective packaging disposed around at least the first input device, the first output device, and the processor, wherein the protective packaging prevents bodily fluids from contacting the device.*

Rejections

Claims 1, 7, 9–13, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano et al. (US 2010/0167385 A1; July 1, 2010) and Feingold (US 4,871,351; Oct. 3, 1989).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Fridez et al. (US 2011/0270025 A1; Nov. 3, 2011).

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Strother et al. (US 2005/0278000 A1; Dec. 15, 2005).

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Feingold, Strother, and Thrope et al. (US 2007/0032837 A1; Feb. 8, 2007).

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Fang et al. (US 7,447,533 B1; Nov. 4, 2008).

Claims 14 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Morgan et al. (US 2008/0300597 A1; Dec. 4, 2008).

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Faltys et al. (US 6,980,864 B2; Dec. 27, 2005).

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, and Thrope.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano, Feingold, Thrope, and Swerdlow et al. (US 2004/0106955 A1; June 3, 2004).

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Celentano and Zhang et al. (US 2005/0288600 A1; Dec. 29, 2005).

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Mandell (US 2006/0122661 A1; Jun. 8, 2006), Feingold, and Yang et al., *Distributed Recognition of Human Actions Using Wearable Motion Sensor Networks*, Journal of Ambient Intelligence and Smart Environments, vol. 1, no. 2, 103–15 (2009) (the version relied upon by the

Examiner has page numbers 1–13 and is available at <https://people.eecs.berkeley.edu/~yang/paper/JAISE08-AllenYang.pdf>).

ANALYSIS

We have reviewed the Examiner’s rejections and the evidence of record in light of Appellants’ arguments that the Examiner has erred. We disagree with Appellants’ arguments and conclusions. We adopt as our own: (1) the findings and reasons set forth by the Examiner in the Office Action from which this appeal is taken and (2) the findings and reasons set forth in the Examiner’s Answer. We concur with the conclusions reached by the Examiner and further highlight specific findings and argument for emphasis as follows.

Independent Claim 1

Appellants contend the Examiner erred in rejecting independent claim 1, because the combination of Celentano and Feingold does not teach or suggest “a protective packaging disposed around at least the first input device, the first output device, and the processor, wherein the protective packaging prevents bodily fluids from contacting the device.” App. Br. 11–12; Reply Br. 6–7. Appellants argue that the keypad and display (input and output device) taught by Feingold are kept outside the body of the patient and that sealing the keypad and display in a protective titanium case would prevent the user from operating them. *Id.* Appellants also argue that hermetically sealing Celentano’s user interface and display in Feingold’s titanium case would render them inoperable and that one of ordinary skill would never attempt to modify Celentano in such a manner. App. Br. 13; Reply Br. 8–9.

The Examiner, however, does not use the input and output devices taught by Feingold to reject claim 1. Ans. 4. Rather, Feingold's protective packaging is used to modify the medical device taught by Celentano to prevent bodily fluids from contaminating Celentano's device. *Id.* The Examiner finds that Celentano teaches a variety of input and output devices that would not be precluded from use even if the entire device were encased, e.g. in "a conventional audible indication device 36" or in a "conventional vibratory device 38." Ans. 5 (citing Celentano ¶ 45). The Examiner also finds that Celentano also teaches a wireless communication module which allows for direct user input through communication with an external electronic device. *Id.* at 6 (citing Celentano, Fig. 1).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Celentano and Feingold teaches or suggests "a protective packaging disposed around at least the first input device, the first output device, and the processor, wherein the protective packaging prevents bodily fluids from contacting the device," as recited in independent claim 1. Therefore, we sustain the Examiner's rejection of claim 1, as well as independent claims 21 and 22, which recite similar subject matter.

Dependent Claims 4–20

Appellants have not presented separate, substantive arguments with respect to dependent claims 4–20. *See* App. Br. 11–13. Therefore, we are not persuaded the Examiner erred in rejecting these claims. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014); *In re Lovin*, 652 F.3d 1349, 1356 (Fed. Cir. 2011) ("We conclude that the Board has reasonably interpreted Rule 41.37 to require applicants to articulate more substantive arguments if they wish for individual claims to be treated separately."). Accordingly, we sustain the

Appeal 2016-000601
Application 13/715,916

Examiner's rejection of claims 4–20.

DECISION

We AFFIRM the Examiner's rejection of claims 1 and 4–22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED